

City of Detroit


CITY COUNCIL

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TO: The Honorable Budget, Finance and Audit Committee
Sheila M. Cockrel, Chair

FROM: David D. Whitaker, Esq. 
Research and Analysis Division Staff

DATE: November 2, 2007

**RE: REVISIONS TO DETROIT CITY CODE CHAPTER 18 – FINANCE AND
TAXATION, ARTICLE V – PURCHASES AND SUPPLIES**

Pursuant to this Honorable Body's request, the Research and Analysis Division evaluated Chapter 18 – Finance and Taxation, Article V, Purchases and Supplies of the Detroit City Code (hereinafter "the ordinance" or "Purchasing Ordinance"). The ordinance is attached.

The Purchasing Ordinance was amended in 1999-2000 with the goal of increasing the City's procurement with businesses in Detroit, both large and small. This was accomplished, in part, by expanding/creating the definition of Detroit-based business, Detroit-resident business, Detroit-small business, Detroit-based micro-business concern and mentor-venture relationships. Equalization categories were added and the equalization points/percentages were increased in some categories. The amendments were viewed as a tool to develop and grow Detroit businesses, employ Detroiters, and to circulate wealth within the community. The City spends hundreds of millions of dollars a year on contracts with vendors.

Introduction

This assignment was first referred to RAD on June 29, 2007, to address loopholes that may exist in the ordinance allowing unqualified companies to take advantage of the aforementioned incentive so as to increase their likelihood of obtaining contracts with the City. To accomplish this assignment, RAD met with representatives of the Law Department, Purchasing Department, Human Rights Department and Office of Targeted Business Development on two occasions, and we attempted to draft amendments to the Purchasing Ordinance. At our second meeting, we determined that further input from City Council is necessary to determine the breadth of ordinance amendments this Honorable Body desires.

Subsequent to our meetings, other issues have arisen regarding provisions of the ordinance as they pertain to specific contracts. This comprehensive memorandum is intended to address all outstanding issues to date with regard to the Purchasing Ordinance. These issues are:

- 1.) Defining what constitutes a “broker,” whether businesses acting as brokers should be awarded contracts with the City, and whether the Purchasing Ordinance should be amended to change the definition of “Detroit-based business” or the term “headquarters;”
- 2.) Whether equalization points/percentage credits should be awarded to a joint enterprise between two Detroit based businesses when the only bidders are Detroit based businesses;
- 3.) Whether the Purchasing Ordinance should be amended to include provisions regarding change orders;
- 4.) Whether the Purchasing Ordinance should be amended to include mandatory monitoring provisions to ensure successful bidders comply with the contract and maintain the criteria entitling them to be certified as Detroit based business, Detroit headquartered businesses, etc.;
- 5.) Whether the Purchasing Ordinance should be amended to include provisions that encourage “environmentally friendly” contracts with the City.

Discussion of Issues

1.) Amendment of the Definitions Section of the Purchasing Ordinance May Address this Honorable Body’s Concern about Bids being Awarded to Alleged “Broker” Businesses.

This Honorable Body has expressed concerned about a business that is merely a “broker” being awarded a City contract. The concern is because the broker business:

- a. Is able to attain certification as a Detroit-based or Detroit-Headquartered business;
- b. Is entitled to equalization credits or points under the Purchasing Ordinance;
- c. Links with a non-Detroit business in a sham joint venture, mentor venture, subsidiary or contractor/subcontractor relationship;
- d. Acts merely as a conduit for another, non-Detroit business that receives financial benefit as a result of the contract between the City and the broker that the non-Detroit business would not have received but for the contract between the City and the broker;
- e. Does not perform any service or provide a good that could not be performed or provided by the entity with whom the broker established a relationship; and
- f. Scores the highest points because of equalization to become the successful bidder.

As our working group assessed ways to minimize the possibility of brokers becoming the successful bidder of a City contract, we started with an evaluation of the definition of Detroit-based businesses under Section 18-5-1. The definition in the current ordinance was drafted in 1999 after a substantial amount of discussion and vetting between City Council and several high-level representatives from the Archer Administration. Again, the amendments were drafted with the goal of encouraging the establishment of businesses in the City; bringing much-needed tax revenue, economic development, and jobs to the City. Without question, progress toward fulfillment of the intended goals has been obtained. However, businesses that successfully gain City contracts essentially because of the incentives, remaining stagnant without growth in income or jobs, raises concern that the business is merely a broker. Possible remedies may be arrived at by a re-examination of the definitions section.

As we thought out the ramifications of changing the definition of "Detroit-based business (D-BB)," we felt that each of our proposed changes could have the unintended consequence of hurting small, start up entrepreneurships. The current definition is as follows:

Detroit-based business (D-BB) means a business which pays city income taxes on the business's net profits and pays city property taxes on 1) a plant or office and equipment which are ordinarily required for the furnishing of the goods or the performance of the services required by the contract and referred to in the application for certification as a Detroit-based business or 2) other real or personal property in the city equivalent in value to such plant or office and equipment for not less than one (1) taxable year immediately prior to the date of the application for certification as a Detroit-based business in addition a Detroit-based business shall satisfy at least three of the following eight (8) criteria:

- (1) Provide verification that an existing inventory of the product(s) which the business offers to the city is physically located at a city site; or
- (2) Provide verification of the ability of the business to service/repair product(s) to be sold to the city at a city site; or
- (3) Provide verification that the business has an adequate number of employees based at its city site to perform the services indicated in its application for certification; or
- (4) Provide verification that its headquarters is located within the city; or
- (5) Provide verification that a majority fifty-one (51) percent of the full-time employees, chief officer and managers of the business regularly, work and conduct business in the city; or
- (6) Provide references, licenses or other means of verification acceptable to the city that the services the firm offers to the city have

been provided at a city site for at least one (1) year prior to the date of the application for certification; or

(7) Provide documentation that a majority fifty-one (51) percent of the firm's employees working at its city site are Detroit residents; or

(8) Provide verification that the firm has the physical resources and ability to provide the services indicated in its application for certification at a location within the city.

We noted that one of the possible eight criteria for becoming a Detroit-based business is to “provide verification that its headquarters is located within the city.” (Subparagraph (3)) The definition of “headquarters means the place where the chief executive officer and highest-level managerial employees of a business have their offices and perform their management functions.”

Similarly, the Human Rights Department defines *Detroit Headquartered Business* for purposes of certification as follows: “a Detroit Based Business whose headquarters is located within the City of Detroit for one (1) year prior to this application, and the headquarters is that place where the Chief Executive Officer and highest-level managerial employees of that business have their offices and perform their management functions.” (See, City of Detroit website, Human Rights Department webpage)

The working group felt the definition of headquarters was too loose and provided an opportunity for brokers to more easily attain DBB and Detroit Headquartered business status. We felt these definitions did not solve the problem of one person opening a so-called business in their basement with nothing but a phone and computer, claiming this was all they needed to have a “headquarters” to achieve Detroit-based or Detroit Headquartered business status and equalization points/percentages. In some cases, a cell phone and computer is all one needs to operate a legitimate business; however, the definition is ripe for manipulation by brokers. Also, an unscrupulous non-Detroit business may attempt to claim Detroit-based business status by setting up a one-person office in the City and declaring it the headquarters.¹

Thus, we believe the definition of “**headquarters**” should be strengthened. RAD proposes the following definition, which modifies a definition the Administration suggested:

Headquarters means the office that serves as the administrative center of an enterprise and physically contains tools, equipment and supplies necessary to conduct the actual services or provide the goods the business proposes to offer to the City; and the office where the chief executive officer and highest-level management staff perform the majority of their management functions. Additionally, the headquartered enterprise shall not have a larger presence in any other location (including affiliates or an LLC).

¹ The importance of Detroit-based and Detroit Headquartered certification in the bidding process is more fully described below in Section b, entitled “The Importance of Equalization.”

Again, there can never be a “perfect” definition of any term in an ordinance. Intelligent business owners will always find a way to work around the language. Vigilant contract monitoring by City officials will be required to give some level of assurance that the goals the City has set are not thwarted.

Perhaps a better way to eliminate brokers from manipulating the ordinance is to add a definition for brokers and to prohibit or limit brokers from being considered as bidders. RAD researched ordinances in other cities and states, and proposes that the following definitions be added to the ordinance based upon language found in the Chicago City Code:

“Broker” means a person or entity that fulfills a contract with the City by purchasing or receiving supplies or equipment from a third party rather than out of its own existing inventory, and provides no substantial service other than acting as a conduit between a third party and the City; or fulfills a contract with the City by providing a service that could be offered directly to the City by a third party with whom the person or entity has a joint venture, mentor venture, subsidiary or subcontractor relationship.

“Substantial service” means performance of a considerable, basic or essential, amount of work as an occupation or business having real worth, value or effect.

It is important to note that small entrepreneurship may require the use of a subcontractor to fulfill a contract and this is completely acceptable and intended under the Purchasing Ordinance as it currently exists. Smaller businesses must often link up with other businesses to be considered a legitimate bidder on a contract. The goal of defining a broker is to eliminate the person or entity who acts merely as a pass through for another business.

Example 1: Company A is a Detroit-based business that bids on an RFP to sell widgets to the City. Company A does not maintain an inventory of widgets, but will obtain them from Company B, a non-Detroit business. Company A will act as a distributor for the widgets. If Company B does not sell widgets directly to customers and only deals with distributors, then Company A offers a substantial service, is not acting as a mere conduit and is not a broker.

Example 2: Company A is a Detroit-based business that bids on an RFP to sell widgets to the City. Company A does not maintain an inventory of widgets, but will obtain them from Company B, a non-Detroit business. Company B routinely sells widgets directly to customers, but contracts with Company A to act as its alleged distributor. Company A would be a broker because it is not providing a service (distribution/sales of widgets) that could not be offered directly by Company B.²

² Under this example, in contracting to obtain the widgets through Company A the City could be obliged to pay a premium above the price it would pay if it dealt directly with Company B; and the City receives no direct or indirect benefit because Company A, as a broker, likely does not intend to become a thriving Detroit business employing residents.

a.) Some Suggested Ways to Handle Brokers.

1.) Outright Prohibition of Brokers. A simple amendment could be made to the Purchasing Ordinance by adding a sentence to the definition of “lowest responsible bidder” that states: “A prospective contractor that is a broker business shall not be considered as a bidder for any reasons under this Division.” Similar language is found in the Chicago City Code. (See attached.)³

2.) Allowance for Brokers to Obtain City Contracts. This Honorable Committee may believe an outright prohibition of awarding contracts to brokers is too restrictive and not in the City’s best interests. There may be occasions where a broker business provides benefits to the City. In fact, certain goods or services may not be available to the City but for the “services” of brokers. There may be a need to maintain some flexibility, yet a way to prevent manipulation of the bidding process. RAD suggests that in the event a contract with a vendor appears to be with a broker, as defined above, yet is deemed to be favorable to the City, the contract could be awarded for a term of perhaps one or two years. At the end of the term, the City will assess whether the broker has increased the number of Detroiters it directly employs and/or increases the level of services or goods it *directly* provides to the City. By allowing the brokers to gain contractor status, but insisting upon growth of his/her business, the overall goals of expansion of economic opportunities within the City is furthered.

3.) Mandate Brokers to Bid as a Mentor-Venture. Another option to outright prohibition of brokers is to require brokers to bid as a mentor-venture with the entity actually providing the goods or services. Procedurally, this would have to be instituted at the time bids are scored. The Purchasing Department and/or evaluators would have to make the determination that a particular bidder was a broker. The broker would then have to disclose the entity actually providing the goods or services and that relationship would be scored as a “mentor venture.” Under the ordinance, a mentor venture means a joint venture of separate firms, one of which is a D-BB, D-BSB, D-RB or D-BMBC⁴, which has been created to perform a specific contract, and is evidenced by a written agreement which provides at a minimum that the D-BB, D-BSB, D-RB, or D-BMBC:

- (1) Is substantially included in all phases of the contract including, but not limited to bidding and staffing.
- (2) Provides at least thirty percent (30%) of the total performance, responsibility and project management of a specific job.

³ As a Detroit-based small business, brokers may technically fit in the category of businesses that the City wants to encourage. In fact, there are brokers who have become very successful businesses through the City’s current procurement procedures. Thus, it would appear the intended goals of the ordinance are being achieved and this Honorable Body may not want to legislate in this area. Efforts to try to limit or segregate which Detroit-based businesses (broker vs. non-broker) should be allowed to bid on contracts may create more obstacles than solutions. In Chicago, brokers are not eligible for special credits as a minority or women owned business. They have to stand on their own. An ordinance could amend the Detroit City Code to state that brokers receive zero or limited equalization percentage credits/points. Another option is to limit the dollar amount of contracts awarded to brokers.

⁴ Detroit-based business, Detroit-based small business, Detroit-resident business or Detroit-based micro business concern.

- (3) Receives at least thirty percent (30%) of the total remuneration from a specific contract; and
- (4) Shares in profits and losses.

A broker could not bid on the contract on its own because it does not possess the means to directly provide the goods or services called for under the contract, and another entity is actually providing the goods or services. Thus, the mentor-venture relationship is appropriate, and in all likelihood, most honestly captures the business relationship. Under the current ordinance, a mentor venture is entitled to an extra equalization percentage credit, which is actually a benefit to the broker. However, the arrangement forces the mentor to utilize the mentee in fulfilling the contract. A contract with a mentor venture should be for a short term and periodically assessed to determine if the mentee business is actually providing at least 30% of the work and whether the mentee has shown growth. In other words, the mentor should not be using the mentee business as a sham in order to be awarded a City contract. The mentor should be mentoring the Detroit business so that it can grow into a business that can eventually bid on City contracts on its own, that is to say—without the need for a collaborative business relationship.

b.) The Importance of Equalization.

The award of an equalization percentage credit under the Purchasing Ordinance is very important to potential contractors. A Detroit based business may not be able to beat the price offered by a non-Detroit contractor; but with equalization, the Detroit-based bidder can be awarded the contract. This is by design because, again, the City's goal is to award Detroit businesses more City contracts and not to focus solely on lowest price.

For example: A Detroit-based business bids \$100,000 to supply widgets to the City, and a non-Detroit business bids \$90,000. According to Table I under Section 18-5-2(1), the Detroit-based business gets a 4% credit off of its bid price as a Detroit based business, it can get another 4% credit if the business also is a Detroit-resident business (minimum of 4 employees, 51% of which are Detroit residents), 3% more credit if the business headquarters is in Detroit. Thus, the Detroit based business receives a credit of 11% off of its bid price. Eleven percent of \$100,000 is \$11,000, so the Detroit-based business bid is adjusted to \$89,000 and beats the non-Detroit business and may be awarded the contract as the lowest bidder. The City will still *pay* the \$100,000 that the Detroit-based business bid; the adjusted bid is *only* for the purposes of scoring.⁵

Potential contractors are well aware of the benefit of equalization percentage credits and some have creatively utilized the scoring process. A proposed goal of affirmatively legislating a broker relationship is to ensure creative use of the scoring process does not work to the detriment of the City and non-broker businesses.

⁵ Professional services contracts have a different scoring process; however, the purpose and effect is the same.

2.) A Policy Decision Must be Made on the Question of Whether Equalization Points/Credits Should be Awarded to a Joint Enterprise Between Two Detroit-based Businesses When Only DBBs Bid on a Contract

Barthel Contracting recently protested the bid for Contract PW 6942 and questioned whether the Purchasing Ordinance was properly applied because a joint venture received equalization points when all bidders were Detroit-based businesses. The joint venture was awarded the bid and, allegedly, contracting with the joint venture will cost the city \$92,000 more. The Purchasing Director responded to the protest and stated that the ordinance was properly applied and equalization points under Table II of Section 18-5-2 were properly awarded. The Purchasing Director is correct.

The ordinance does not allow equalization points to joint ventures if the bid was specifically *limited* only to Detroit-based businesses. (Section 18-5-2(4)) However, the ordinance allows a joint venture between two Detroit-based businesses to obtain equalization points or credits when all other bidders are *coincidentally* Detroit-based businesses. A policy decision is called for as to whether to amend the ordinance to state that no equalization will be applied in the event only Detroit-based businesses bid on a contract.

The policy decision should take into account the following:

- a.) Equalization points/credits for joint ventures and mentor ventures was meant to incentivize big businesses to link up with smaller businesses, and City Council values these relationships;
- b.) Joint/mentor venturers are willing to split the revenues of a contract in order to gain equalization points/credits;
- c.) In many instances, bidders are not aware whether all the other bidders are DBBs, so they elect to enter into a venture relationship in order to attain equalization points/credits, and should not be "penalized" after the fact when coincidentally all other bidders are DBBs; and
- d.) The Purchasing Director cannot recall any other instance since the ordinance was last amended in 1999 where there was a bid protest for this type of situation; and perhaps an ordinance amendment is not an appropriate response to a single bid protest.

Although this issue may have arisen only once, since it has happened it would be reasonable to predict that it may happen again. Reasonable prudence may require that the ordinance be amended. Such an amendment can be easily drafted.

3.) **RAD Does Not Believe the Purchasing Ordinance Requires an Amendment Regarding Change Orders**

This Honorable Body is also concerned about potential contractors underbidding an RFP, RFQ, etc.; being awarded the contract; and then seeking a change order to increase the price of the contract. Change orders to a contract may be required for any number of legitimate reasons and flexibility is necessary with regard to approval. If a change order requires a vendor to perform additional services or perform services for a different period of time, then an increase in price may be merited. However, in the event an unscrupulous bidder intentionally submits an artificially low bid in order to be awarded the contract, and then seeks a change order to increase the contract for no other reason than to increase the price for the same goods or services originally contracted for; then there may be reason for concern. There are remedies readily available to the City to address the concern.

It is important to note that under Section 18-5-5, renewals or extensions of contracts or the exercise of an option to renew or extend a contract requires separate City Council approval. City Council approval of a contract or amendment is not an automatic approval of any renewal or extension sought in the future. This Honorable Body is the final decision maker whether a change order should be approved. If the Body believes the request for a change order is without merit or fraudulent, then it has the authority to simply vote down the request.⁶

Further, if the City Council believes an unscrupulous vendor has purposely underbid a contract and defrauded the City, a civil cause of action for "fraud in the inducement" may be filed. The elements of fraud are: (1) a material representation was made; (2) it was false; (3) the contractor making it knew that it was false at the time he made it, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) the contractor made it with the intention that it should be acted upon by the City; (5) the City acted in reliance upon it; and (6) the City thereby suffered injury. The City would have the burden of proving all of these elements.

Since there is potentially the option of filing a civil action against the vendor and this Honorable Body has the final authority to disapprove change orders, RAD does not believe an ordinance amendment is necessary regarding change orders. However, the precise reason for any change order should be well articulated to Council by the requesting department prior to the Body taking action upon the request.

⁶ There may be certain circumstances where a price increase is requested for the same goods/services originally contracted for, but the underlying factual circumstances are, in fact, beyond the original contemplation of the City or its contractor. Such as where an unknown underground well exists in a demolition or construction project, the removal of which is required.

4.) RAD Recommends That the Purchasing Ordinance be Amended to Include Monitoring Provisions Regarding Contract Compliance and Detroit-based Business and Detroit Headquartered Business Certification.

a.) Monitoring Contract Performance

On October 26, 2006, RAD authored a report after attending Purchasing University—a seminar the Purchasing Department holds to explain policies and procedures. In our report we discussed the role of the Contract Administrator (content repeated here). This person is to interact with the vendor after the contract is awarded. The Contract Administrator is expected to meet with the supplier to explain the department's expectations and review the contract requirements. Contractor Administrators are "encouraged" to institute a follow-up program with suppliers once the service has begun, to ensure that the supplier is performing in a manner consistent with the City's expectations and as the contract requires. They should maintain a performance record that shows the supplier's ability to keep delivery promises and reliability, together with consistency of quality and performance of products and services furnished. They should also document instances where the supplier's performance or a product does not meet specifications, or exceeds expectations.

Further, during the bid process, potential contractors must disclose the percentage of work they will perform versus the percentage of work subcontractors will perform. These percentages become an important part of the calculation during the weighted bid process. By way of example, if Company A stated it would perform 80% of the work and a subcontractor would perform 20% of the work; Company A receives 80% of the possible 20 points in the category entitled "Contract Performance of Prime and Sub-Prime Contractor." Once the contract is awarded, the Contract Administrator should monitor whether Company A, the prime contractor, is performing 80% of the work as stated. If it is not, the Purchasing Department may become involved as a facilitator in the event the department and vendor cannot work out the situation. The Director of Purchasing also has the authority to put a vendor in default if it is not in compliance with the contract. The City may then file a civil action against the vendor for non-compliance or other legal theories, such as fraud.

The Contract Administrator position has a very important role in the integrity of the entire purchasing system, as well as City Council's decision whether to renew, extend or increase a contract. The Purchasing Department created a Contract Administrator's Manual that recommends how the Contract Administrator should carry out his or her duties. There are directives for handling instances when a product or performance does not meet expectations. However, the duties identified in the Contract Administrator's manual are not mandatory. The Purchasing Department only has the authority to make suggestions.

We believe it would be important for the Contract Administrator to sign a form or affirmation at the time of extending, renewing or increasing a contract stating whether the supplier/vendor has fully complied with the terms and conditions of the contract, or provide an explanation as to why the contract was not followed. The City Council may take the affirmation into consideration when deciding whether or not to approve a contract, change order or extension.

RAD believes an amendment to the Purchasing Ordinance is necessary to make Contract Administrator monitoring and reporting mandatory. The Purchasing Division could promulgate the rules and forms necessary for preparing monitoring reports.

b.) Monitoring Detroit-based Business and Detroit Headquartered Business Certification

RAD also believes there should be monitoring of Detroit-based businesses and Detroit Headquartered businesses to ensure that once the business attains certification and is awarded a contract, the business *maintains* the criteria. It will likely be most effective for the Human Rights Department and Office of Targeted Business Development to do this monitoring. RAD suggests the ordinance be amended to require a report from Human Rights Department or Office of Targeted Business Development at the time of extending, renewing or increasing a contract stating whether the supplier/vendor still maintains criteria to be certified as a Detroit-based or Detroit Headquartered Business.

Our only word of caution is that requirements for monitoring reports should not be so cumbersome that the contract approval process is delayed.

5.) Encouraging “Environmentally Friendly” Contracts with the City

The Honorable City Council President Kenneth V. Cockrel, Jr. desires environmentally friendly principles be incorporated into the City’s purchases and contracts. The working group has not yet met regarding this topic; however, RAD reviewed materials President Cockrel’s office provided, conducted additional research, spoke with the Mayor’s Liaison to City Council, and met with the Director of Purchasing. It appears there are ongoing efforts on this subject within the Administration and the City Council, specifically through the work of the Green Task Force. A review of materials from around the country and Europe provides a substantial amount of background for establishing environmentally friendly practices in City government. RAD noted a recurring theme in all materials is that a committee of professionals and City agencies is first assembled to evaluate current practices, target areas for environmental initiatives, and determine what is economically feasible for the City.

It is our understanding that the Green Task Force has assembled a team of people from a variety of environmental groups, City agencies, businesses and other entities. The Task Force is actively looking at what the City might do internally through procedures to be incorporated into ordinances and/or procurement, as well as from a policy standpoint by providing incentives for vendors. The Director of Purchasing suggests that ordinance provisions contain specific criteria to prevent vendor confusion, subjective interpretations, and possible vendor protests. Another possible approach is to require vendors to meet certain criteria in order to become classified as “green” vendors who may bid on contracts, as opposed to creating separate environmental criteria for each RFP, RFQ, etc.

RAD learned that Kandia Milton, the Mayor’s Liaison to City Council, is currently in Seattle, Washington attending the U.S. Conference of Mayors Climate Protection Summit. The purpose of the summit is to discuss effective solutions to global warming, strategies to implement green

culture in communities, and bring “green collar” jobs to cities. The U.S. Conference of Mayors has an 82-page Energy and Environment Best Practices Guide for cities to follow in order to incorporate environmentally sustainable practices into government operations.⁷ The Guide covers such topics as residential energy efficiency rebates, how to fight climate change, improve the local environment, conserving energy, and construction of “green” buildings. The Guide may be useful in drafting new ordinance provisions.

RAD will keep abreast of developments and discussions within the Green Task Force, seek feedback from the Administration, and continue our research in order to make recommendations to this Honorable Body in the near future regarding new ordinance provisions on this topic.

Conclusion

The length and breadth of this memorandum highlights many issues related to the Purchasing Ordinance. We hope this information will be helpful to this Honorable Body in making policy decisions. We would be pleased to answer any questions. RAD suggests that the Budget, Finance and Audit Committee set these matters for a discussion session and invite the Human Rights Department, Office of Targeted Business Development, and Purchasing Department to attend.

⁷ http://www.usmayors.org/uscm/best_practices/EandEBP07.pdf

DIVISION 1. GENERALLY**Sec. 18-5-1. Definitions.**

For the purpose of this division, the following words and phrases shall have the meanings respectively ascribed to them by this section:

City means the City of Detroit.

City council means the legislative body of the city.

City-site means a location within the corporate limits of the city or property owned by the City of Detroit that is outside the corporate limits of the city.

Detroit-based business (D-BB) means a business which pays city income taxes on the business's net profits and pays city property taxes on 1) a plant or office and equipment which are ordinarily required for the furnishing of the goods or the performance of the services required by the contract and referred to in the application for certification as a Detroit-based business or 2) other real or personal property in the city equivalent in value to such plant or office and equipment for not less than one (1) taxable year immediately prior to the date of the application for certification as a Detroit-based business in addition a Detroit-based business shall satisfy at least three of the following eight (8) criteria:

- (1) Provide verification that an existing inventory of the product(s) which the business offers to the city is physically located at a city site; or
- (2) Provide verification of the ability of the business to service/repair product(s) to be sold to the city at a city site; or
- (3) Provide verification that the business has an adequate number of employees based at its city site to perform the services indicated in its application for certification; or
- (4) Provide verification that its headquarters is located within the city; or
- (5) Provide verification that a majority fifty-one (51) percent of the full-time employees, chief officer and managers of the business regularly, work and conduct business in the city; or
- (6) Provide references licenses or other means of verification acceptable to the city that the services the firm offers to the city have been provided at a city site for at least one (1) year prior to the date of the application for certification; or
- (7) Provide documentation that a majority fifty-one (51) percent of the firm's employees working at its city site are Detroit residents; or
- (8) Provide verification that the firm has the physical resources and ability to provide the services indicated in its application for certification at a location within the city.

Detroit-based micro business concern (D-BMBC) means a business which meets the definitions of Detroit-based business and micro business concern as defined within this section.

Detroit-based small business (D-BSB) means any business which meets the definitions of Detroit-based business and small business concern as defined within this section.

Detroit-resident business (D-RB) means any business which employs a minimum of four (4) employees at least fifty-one (51) percent of which are city residents.

Fiscal year means the fiscal year of the city being July 1st through June 30th.

Headquarters means the place where the chief executive officer and highest-level managerial employees of a business have their offices and perform their management functions.

Invitation for bids means the complete assembly of related documents whether attached or incorporated by reference, furnished to prospective bidders for the purpose of bidding.

Joint venture means a joint venture of separate firms, one of which is a *DBB*, *DBSB*, *DRB* or *DBMBC*, which has been created to perform a specific contract, and is evidenced by a written agreement which provides at a minimum that the *DBB*, *DBSB*, *DRB*, or *DBMBC*:

- (1) Is substantially included in all phases of the contract, including, but not limited to, bidding and staffing;
- (2) Provides at least fifty-one (51) percent of the total performance, responsibility, and project management of a specific job;
- (3) Receives at least fifty-one (51) percent of the total remuneration from a specific contract; and
- (4) Shares in profits and losses.

Lowest responsible bidder means the bidder who, or which, submits the lowest bid, conforming to specifications, as evaluated under section 18-5-2(1)(d) of this Code, and who or which, meets the following standards as they relate to the particular contract under consideration.

The prospective contractor must demonstrate:

- (1) Adequate financial resources for the performance of the contract, or the ability to obtain such resources as required during performance;
- (2) The necessary experience, organizational structure and resources, technical qualifications skills and facilities, or the ability to obtain them, including the ability to retain subcontractors as required;
- (3) The ability to comply with the proposed or required time of delivery or performance schedule;
- (4) A satisfactory record of integrity, judgment and performance. Contractors who, or which, are delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall be presumed to be unable to fulfill this requirement in the absence of evidence to the contrary or compelling circumstances;
- (5) The ability to conform to the requirements of the fair employment practices ordinances;
- (6) Qualification and eligibility to receive an award under applicable laws ordinances and regulations; and
- (7) Possesses of the ability to produce, upon request acceptable evidence of ability to obtain financial resources and the experience, organizational structure and resources, technical qualifications, skills and facilities needed for the proper performance of the contract sought.

Major means not less than the specified dollar valuation of a contract in relation to the corresponding contract classification as follows:

Major Contracts

TABLE INSET:

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Type of Contract	Dollar Valuation
Purchase contracts:	
Equipment and supplies	\$270,000.00
Public works contracts:	
Demolition	678,000.00
Street paving	1,350,000.00
Construction	2,700,000.00
Nonprofessional services:	
Including but not limited to, tree removal, catering, janitorial, maintenance	678,000.00
Disposition of equipment and supplies unsuitable for public use	25,000.00

Mentor venture means a joint venture of separate firms, one of which is a D-BB, D-BSB, D-RB or D-BMBC, which has been created to perform a specific contract, and is evidenced by a written agreement which provides at a minimum that the D-BB, D-BSB, D-RB or D-BMBC:

- (1) Is substantially included in all phases of the contract including, but not limited to bidding and staffing.
- (2) Provides at least thirty percent (30) of the total performance, responsibility and project management of a specific job.
- (3) Receives at least thirty (30) percent of the total remuneration from a specific contract; and
- (4) Shares in profits and losses.

Micro business concern (MBC) means a business which has average annual gross receipts of one million dollars (\$1,000,000) or less and no more than fifteen (15) employees. A business which is an affiliate or subsidiary of an entity that is not eligible for registration as a micro business concern shall not be registered as a micro business concern.

Small business concern (SBC) means a business which:

- (1) Has been in existence and operating for at least one (1) year prior to the date of application for certification as a small business concern; and
- (2) Does not meet the definition of a micro business concern as defined in this division; and
- (3) Is one (1) of the following:
 - a. A manufacturing business which, for the three (3) fiscal years preceding the date of application for certification, has provided full-time employment to not more than five hundred (500) persons; or
 - b. A general construction business which, for the three (3) fiscal years preceding the date of application for certification, has average annual gross receipts of not more than twenty-eight million (\$28,000,000) dollars; or
 - c. A specialty construction business whose average annual gross receipts have not exceeded twelve-million (\$12,000,000) dollars in the three (3) fiscal years

preceding the date of application for certification; or

d. A wholesale business which, for the three (3) fiscal years preceding the date of application for certification, has provided full-time employment to not more than one hundred (100) persons; or

e. A retail business which, for the three (3) fiscal years preceding the date of application for certification, has average annual gross receipts of not more than six million (\$6,000,000) dollars; or

f. A service business, other than professional, which for the three (3) fiscal years preceding the date of application for certification, has average annual gross receipts of not more than six million (\$6,000,000); or

g. A professional services business, which for the three (3) fiscal years preceding the date of application for certification, has had average annual gross receipts of not more than six million (\$6,000,000) dollars.

A business which is an affiliate or subsidiary of an entity that is not eligible for certification as a small business concern shall not be certified as a small business concern.

(Code 1964, § 21-3-1; Ord. No. 27-85, § 1, 8-7-85; Ord. No. 31-99, § 1, 10-13-99; Ord. No. 15-00, § 1, 6-28-00; Ord. No. 31-03, § 1, 9-24-03)

Cross references: Definitions and rules of construction generally, § 1-1-2.

Sec. 18-5-2. Manner of purchasing.

All purchases by the purchasing director shall be made in the following manner:

(1) *Major purchases.* If the purchase entails a major expenditure, the purchasing director shall provide for the procurement of competitive bids as follows:

a. Prepare the invitation for bids, describing the city's requirements clearly, accurately and completely, avoiding unnecessarily restrictive specifications which might, unduly limit the number of bidders.

b. Publicize the invitation for bids by advertising for bids one (1) or more times in the newspaper designated to print the official business of the city. Where appropriate the purchasing director shall include advertisements in newspapers, trade journals, association postings, websites, and any other appropriate media sources in addition, the purchasing director may send copies of such advertisement to persons and firms likely to be interested therein. Such advertisement shall accurately and clearly describe or refer to the subject matter of the proposed purchase and may also refer the bidder to specifications on file in the purchasing director's office. Such advertisement shall specify the time and place of submitting bids and such other information from the specifications as the purchasing director shall deem advisable in the interest of the city. After publication of one (1) advertisement, specifications shall not be changed without the publication of a new advertisement calling attention to such change. A reasonable time shall be allowed to enable prospective bidders to prepare and submit bids before the time set for public opening of bids.

c. Receive written bids submitted by prospective contractors.

d. 1. In comparing bids, the bid of any Detroit-based business or Detroit-resident business shall be deemed a better bid than the bid of any competing firm which is not a Detroit-based business or Detroit-resident business whenever the bid of such competing firm shall be equal to or higher than the bid of the

Detroit-based business or Detroit-resident business, after the appropriate equalization percentage credit from the equalization allowance table has been applied to the bid of the Detroit-based firm.

Detroit-Based Business And Detroit-Resident Business Equalization Allowance Table

TABLE INSET:

Contract Amount	Equalization Percentage
Up to \$10,000.00	5%
\$10,000.01 to \$100,000.00	4%
\$100,000.01 to \$500,000.00	3%
\$500,000.01 and over	2%

If the bidder qualifies as both a Detroit-based business and a Detroit-resident business, the equalization factor in the preceding table shall be doubled. If the bidder has qualified as a Detroit-based business by virtue of having its headquarters in Detroit, it shall receive the equalization factor in the preceding table plus an additional three (3) percent.

2. The following equalization percentage credits shall be applied to the bids of the type of firms described in the equalization allowance table below.

Equalization Allowance Table For Joint Ventures, Mentor Ventures, And Detroit-Based Small And Micro Businesses

TABLE INSET:

Detroit-based small business	1%
Detroit-based micro business concern	2%
Joint venture	2%
Mentor venture	1%

(i) A bidder shall receive the equalization percentage credit for each category for which it qualifies. The firm that makes the lowest bid, as evaluated, shall be deemed the lowest bidder.

(ii) In the application of these equalization percentage credits, a joint venture shall not also be considered a mentor venture and a mentor venture shall not also be considered a joint venture. Unless certified before the deadline for submitting a bid, no bidder or firm shall receive an equalization credit as a Detroit-based business. Small business or micro business concern. A joint venture or mentor venture shall not receive an equalization credit unless the Detroit-based business in the venture has been certified as such before the deadline for submitting a bid.

(iii) If a bidder claims an equalization credit as a Detroit-resident business, it shall submit documentation of its eligibility with its bid. The purchasing division or the contracting department shall determine whether the bidder qualifies as a Detroit-resident business after the bid opening.

3. Any bidder who claims entitled to an equalization percentage credit shall agree to make the records necessary to establish eligibility available to the city.

4. After applying any equalization percentage credit as provided above, the contract shall be awarded to the lowest responsible bidder thus evaluated.

5. The above requirements shall not be applicable if any one of the following conditions is found to exist.

(i) The expenditure involved is not "major" as defined in section 18-5-1 of this Code.

(ii) Public exigencies require the immediate delivery of the articles or performance of the service.

(iii) The purchasing director certifies that only one (1) source of supply is available.

(iv) The services to be performed are professional in nature or

(v) The item to be acquired is rare or unique.

(2) *Non-major purchases.* If the purchase entails an expenditure which is not major the purchasing director is authorized to award the contract subject to the following conditions:

a. The practice of competitive bidding is required but formal advertising is required only for contracts over ten thousand dollars (\$10,000.00). An equalization percentage credit shall be allowed as provided in subsection (1)d. of this section whenever there is full and free competitive bidding. However the purchasing director may limit bidding to Detroit-based businesses. Detroit-based small business concerns or Detroit-based micro business concerns in which event no equalization percentage credit shall be allowed.

b. In soliciting bids the purchasing director shall affirmatively seek out Detroit-based business concerns.

c. The purchasing director must make a determination that the prospective contractor is responsible. The purchasing director should utilize all available information from within the division and other city departments from the prospective contractor and from banks and other financial companies in order to ascertain whether the prospective contractor is responsible under the guidelines set forth under "lowest responsible bidder" as defined in section 18-5-1 of this Code.

(3) *Prohibition against unapproved assignments or subcontracts.* A Detroit-resident business a Detroit-based business or a mentor venture or joint venture with a Detroit-resident business or Detroit-based business may not assign or subcontract its city contracts to a Non-Detroit-based business or a Non-Detroit-resident business without the approval of such assignment or subcontract by the purchasing director.

(4) *Detroit-based business. Detroit-based small business or Detroit-based micro business concern: Limited bidding.* On his or her own initiative or at the request of the contracting department, the Purchasing Director may limit the bidding for a contract to Detroit-Based Businesses. Detroit-based small businesses, or Detroit-based micro businesses, provided that there are at least three (3) firms certified or registered by the human rights department which would be eligible to bid for the contract. The equalization factors in section 18-5-2(1)d of this Code shall not apply to contracts put out for bids

under this subsection in determining whether to so limit the bidding, the purchasing director should make commercially reasonable efforts to maximize the utilization of Detroit-based businesses, Detroit-based small businesses, or Detroit-based micro businesses. As used in this subsection (18-5-2(c)(4) only, *should* means a strong recommendation, but does not mandate the actions described.

(Code 1964, § 21-3-2; Ord. No. 27-85, § 1, 8-7-85; Ord. No. 19-86, § 1, 10-1-86; Ord. No. 15-90, § 1, 9-26-90; Ord. No. 29-90, § 1, 12-7-90; Ord. No. 22-93, § 1, 11-10-93; Ord. No. 31-99, § 1, 10-13-99; Ord. No. 31-99, § 1, 10-13-99; Ord. No. 15-00, § 1, 6-28-00)

Sec. 18-5-3. Manner of selling surplus or obsolete equipment, etc.

(a) The purchasing director shall sell by sealed bid or auction all personal property of the city no longer necessary or which shall have become unsuitable for public use or which may have been condemned as useless by any of the various departments, offices, boards, commissions and institutions.

(b) The same procedures shall be followed, as near as may be, as in the case of purchases, except that disposition of personal property which is rare or unique shall be made in accordance with the provisions of section 18-5-8 of this Code.

(c) The equalization percentage shall not apply to the sale or disposition of city property under this section.

(Code 1964, § 21-3-3; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-4. Procurements under grant-funded contracts.

Where a contract for goods or services is funded by a grant for which City Council approval is required by section 18-4-2 of this Code, acceptance of the grant by the City Council shall be deemed an acceptance of the procurement regulations and procedures specified by the grant.

(Code 1964, § 21-3-5; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-5. Council approval required for certain contracts; monthly report on certain contracts; emergency procurements; council notification, ratification required.

(a) The following contracts and amendments thereto shall not be entered into without City Council approval: goods and services over the value of twenty-five thousand dollars (\$25,000.00); all contracts for personal services, regardless of the dollar value; all grant-funded contracts; all revenue contracts, regardless of dollar value, including contracts for services rendered by the city, its departments and agencies; and all purchases and sales of and other transfers of interest in municipal land. City Council approval of a contract or amendment shall not be deemed an approval of any renewal or extension sought to be entered pursuant to such contract. Such renewals or extensions of contracts or the exercise of an option to renew or extend a contract shall require separate City Council approval. The director of the Purchasing Division of the Finance Department shall furnish the City Council weekly report of all contracts for goods and services exceeding five thousand dollars (\$5,000.00) but not exceeding twenty-five thousand dollars (\$25,000.00). The purchasing director shall furnish the City Council with a quarterly report on number and dollar value of contracts awarded to D-BB's, D-BSB's, D-RB's, D-BMBC's and SBC's. In addition, the purchasing director shall notify the City Council of any provision in a contract submitted for approval which would permit, or authorize, a renewal or extension of such contract or a loan or prepayment.

(b) The purchasing director, without prior approval of the City Council, may make, or authorize others to make, an emergency procurement when public exigencies require the immediate delivery of articles or performance of services or when there exists a threat to public health, welfare or safety under emergency conditions where prior approval of the City Council would be impossible or impracticable under the circumstances; provided that:

(1) Emergency procurement shall be made with such competition as is practicable under the circumstances; and

(2) The purchasing director or other person he or she authorizes to make emergency procurement shall, within one (1) week of the procurement, notify the City Council in writing of the procurement and the basis for the emergency and for the selection of the particular contractor. The purchasing director shall submit the procurement contract for City Council approval within four (4) weeks of the procurement.

(c) Each contract, or amendment, renewal or extension awarded by the city which requires City Council approval under subsections (a) or (b) of this section, or under section 4-122 of the 1997 Detroit City Charter shall contain a provision that states that no payment shall be authorized or made pursuant to the contract, amendment, renewal, or extension until and unless the contract, amendment, renewal, or extension is so approved.

(Code 1964, § 21-3-6; Ord. No. 479-H, § 1, 1-13-82; Ord. No. 521-H, § 1, 10-27-82; Ord. No. 570-H, § 1, 11-9-83; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-6. Additional powers and duties of director.

The purchasing director shall have such other powers and perform such other duties as are prescribed by this article or may be necessary under this article for the proper discharge of his or her duties.

(Code 1964, § 21-3-8; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-7. Powers of purchasing division supplemental to Charter, etc.

The powers and duties of the purchasing director and of the Purchasing Division of the Finance Department, as set forth in this article, shall be regarded as explanatory of the powers and duties set forth in the Charter and in this Code and shall not be deemed to restrict or circumscribe powers and duties granted or imposed in this Code or by executive order.

(Code 1964, § 21-3-9; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-8. Purchasing director to contract for disposition of rare items.

The purchasing director is hereby authorized to contract for the disposition of unique or rare items, including but not limited to, art objects, antiques, books and animals, by competitive bidding, either in writing or at auction, in his or her discretion. Disposition of such items shall be subject to the approval of the City Council.

(Code 1964, § 21-3-10; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-9. Security to be provided by bidder and contractor.

The purchasing director may require adequate security to be provided by the bidder and

contractor when, in his or her discretion, it is deemed to be necessary for the protection of the public interest. This provision shall be interpreted as supplemental to, and not as a substitute for, the requirements relating to bid, payment and performance bonds.

(Code 1964, § 21-3-11; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-10. Specifications.

Specifications shall be drawn in accordance with the directives set forth in section 18-5-2(1)a of this Code, and shall be prepared by the using department, subject to the approval of the purchasing director. Whenever a commodity is to be procured or disposed of by more than one (1) department, the Purchasing Division shall establish standard specifications.

(Code 1964, § 21-3-12; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-11. Appropriation to be made; tax to be levied or local assessment district to be created for construction of public works.

No contract shall be awarded for the construction of any public work until the city council has levied a tax or assessment or appropriated funds in the budget to defray the cost and expenses of the same, or until the city council has created a local assessment district for the levy of a special assessment therefor. The creation of a local assessment district for any improvement shall be a sufficient appropriation under the terms of section 18-5-12 of this Code.

(Code 1964, § 21-3-13; Ord. No. 31-99, § 1, 10-13-99; Ord. No. 15-00, § 1, 6-28-00)

Sec. 18-5-12. Certification of city expenditures, contracts, deeds, by the finance director or budget director.

(a) No obligations shall be incurred against, and no payments shall be made from any allotment or appropriation except in accordance with appropriations duly made and unless the finance or budget director certifies that there is a sufficient unencumbered balance in the appropriation and that sufficient funds will be or are available to meet the obligation.

(b) Whenever the city is a party to any contract, deed, lease or other instrument, the finance or budget director shall attach a certification to the deed, contract, lease or other instrument stating that proper and fair consideration has been received by the city.

(Code 1964, § 21-3-14; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-13. Bids or contracts to be denied to persons in arrears to city.

No bid shall be accepted from or contract awarded to any person who is in arrears to the city upon debt or contract, or who has defaulted as a surety or upon any obligation to the city, or who shall in other respects be disqualified according to the provisions of this article or any other provision of this Code or the 1997 Detroit City Charter.

(Code 1964, § 21-3-15; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-14. Public sale of personal property at predetermined prices.

Notwithstanding any other provision in this article, the City Council may by resolution specifying

time, place and date, authorize the purchasing director to sell any personal property owned by the city which is unsuitable for public use and valued at less than one thousand dollars (\$1,000.00) at predetermined prices that have been approved by the purchasing director. The sale of personal property at predetermined prices shall be advertised in a daily newspaper of general circulation, and such advertisements shall set forth the date, time and place for the sale, and the fact that the sale is open to the public.

(Code 1964, § 21-3-16; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-15. Health Department--Procurement from independent contractors.

(a) Notwithstanding any other provisions of this article to the contrary, the director of the City of Detroit Health Department shall procure directly all equipment, supplies and services from independent contractors which are necessary for the administration, operation, and maintenance of the city's public health facilities, where such purchase entails an expenditure of city funds less than twenty-five thousand dollars (\$25,000.00), or such other amount as may be set by resolution of the City Council, provided that such purchases are consistent with section 8-302 of the 1997 Detroit City Charter.

(b) Except as otherwise provided for in sections 18-5-15 through 18-5-17 of this Code, such purchases by the Health Department shall be made in accordance with the city's purchasing procedures, including, but not limited to, those procedures contained in this article.

(c) Any purchase which entails an expenditure of city funds equal to or more than twenty-five thousand dollars (\$25,000.00), or such other amount as may be set by resolution of the City Council, shall be made by the purchasing director, provided, that upon the request of the director of the Health Department and the approval of the purchasing director, the following expedited procedure shall be followed:

(1) Where public exigencies require the immediate delivery of equipment, or supplies, or the immediate performance of services, or the services of independent contractors to meet the operational requirements of the public health facilities, the procurement of competitive bids and formal advertising may be waived by the purchasing director.

(2) The City Council shall be advised of the purchase after the contract or purchase order has been issued when the immediate operational needs of the public health facilities require equipment, supplies or services, and it is not practical to request City Council approval prior to issuing the contract or purchase order.

(Ord. No. 315-H, § 1(21-3-17), 3-14-79; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-16. Same--Agreements for health services.

(a) The director of the City of Detroit Health Department in accordance with the procedures in this section is further authorized to negotiate and enter into agreements with one or more nonprofit institutions for the provision of health services to the public. The Health Department may participate as a member in a nonprofit corporation organization where the members of such nonprofit entity are comprised of nonprofit institutions and the sole purpose of such nonprofit entity is collective procurement of personal property or services, including but not limited to materials, supplies and equipment, and the services of independent contractors necessary for the administration, operation, and maintenance of the participating institutions, including the city's public health facilities, provided that such cooperative or participating agreements shall not impose upon the city the obligation to pay any monies which would be inconsistent with Section 8-302 of the 1997 Detroit City Charter.

(b) All purchases made by the Health Department shall be made in accordance with the city's

purchasing procedures as delineated in this article except for procurements conducted pursuant to the expedited procedures provided within this division, agreements for multi-jurisdictional health programs, agreements for community-based or site-based health services, and cooperative or participating agreements as described in subsection (a) of this section which are subject to sections 18-5-15 through 18-5-17 of this Code and are exempt from section 18-5-2 of this Code and Division 2 of this article.

(Ord. No. 315-H, § 1(21-3-18), 3-14-79; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-17. Same--Monthly reports.

The director of the City of Detroit Health Department shall furnish the City Council a monthly report with such information as the City Council may request of all contracts and amendments thereto involving the Health Department and the expenditure of city funds.

(Ord. No. 315-H, § 1(21-3-19), 3-14-79; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-18. Water and sewerage department--Procurement.

(a) Notwithstanding any other provisions of this article to the contrary and as a specific exception to certain sections herein, the director of the Water and Sewerage Department, with the approval of the Board of Water Commissioners, shall have the authority, formerly vested in the purchasing director, to directly procure, by contract or purchase, all goods, services, and personal services, not in excess of twenty-five thousand dollars (\$25,000.00), necessary to the administration and operation of the Water and Sewerage Department waste water disposal system, provided that such purchases are consistent with section 8-302 of the 1997 Detroit City Charter.

(b) Except as otherwise provided in this section only, such purchases shall be made in accordance with the purchasing procedures prescribed in this article.

(c) For the purposes of this section only the term "major" as defined in section 18-5-1 of this Code and as used in section 18-5-2 of this Code shall describe an expenditure of twenty-five thousand dollars (\$25,000.00) or more.

(d) For the purposes of this section only, formal advertising is required only for contracts over ten thousand dollars (\$10,000.00).

(e) A contract and amendments thereto under this section shall not require City Council approval unless in the aggregate they encumber city funds in excess of twenty-five thousand dollars (\$25,000.00).

(f) Procurement of goods and services or personal services may not be segmented for the purpose of applying the respective dollar limits of subsections (a), (c), (d) and (e) of this section.

(Ord. No. 305-H, § 1(21-3-20), 1-31-79; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-19. Same--Waiver of bid and advertising requirements; delegation of authority.

(a) Upon a finding that public exigencies require the immediate delivery of certain goods or performance of services or personal services to meet operational requirements, the director of the Water and Sewerage Department may waive the procurement of competitive bids and formal advertising.

(b) The director shall have the power to delegate purchasing authority to certain designated individuals in the employ of the Water and Sewerage Department, and shall identify in writing

those persons so designated to the finance director the City Council, and the Board of Water Commissioners.

(Ord. No. 305-H, § 1(21-3-21), 1-31-79; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-20. Same--Information furnished to City Council.

The director of the Water and Sewerage Department shall furnish the City Council with such information as it may request regarding all contracts and amendments thereto involving the department and the expenditure of city funds.

(Ord. No. 305-H, § 1(21-3-22), 1-31-79; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-21. Detroit Housing Commission--Procurement exempted.

Notwithstanding any other provisions of this article to the contrary and as a specific exception to certain sections herein, all procurement by the Detroit Housing Commission, shall be made in accordance with section 14-5-10 of this Code.

(Ord. No. 18-5-21, § 1, 3-15-96; Ord. No. 31-99, § 1, 10-13-99)

Sec. 18-5-22. Review of division by City Council.

On or before December 31, 2000, the City Council shall hold a hearing to review the implementation of this division and its impact upon the City of Detroit. The Council may take legislative action to amend this division.

(Ord. No. 31-99, § 1, 10-13-99)

Secs. 18-5-23--18-5-30. Reserved.

EXCERPTS FROM CHICAGO ORDINANCE

See Subparagraph 2-92-420(c) and Section 2-92-480

ARTICLE IV. MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISE PROCUREMENT PROGRAM

2-92-420 Definitions.

As used in Sections 2-92-420 through 2-92-570 of this chapter, the following terms shall have the following meanings:

- (a) "Affiliate" of a person or entity means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.
- (b) "Board" means the affirmative action advisory board established in Section 2-92-510 of this chapter.
- (c) "Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.
- (d) [Reserved.]
- (e) [Reserved.]
- (f) "Contract" means any contract, purchase order or agreement (other than a delegate agency contract or lease of real property or collective bargaining agreement or a construction contract as defined in Section 2-92-670) awarded by any officer or agency of the city other than the City Council, and whose cost is to be paid from funds belonging to or administered by the City of Chicago, regardless of source.
- (g) "Contract compliance officer" means the officer appointed pursuant to Section 2-92-490 of this chapter.
- (h) "Contractor" means any person or business entity that shall enter into a contract with the city, and includes all partners and all joint venturers of such person.
- (i) "Credit program" means the program provided for in Section 2-92-530 of this chapter.
- (j) "Delegate agency contract" means a contract with a not-for-profit or for-profit organization which provides social services (including but not limited to job training and placement, education, child day care, emergency shelter, home-delivery meals, and health care) to targeted communities under agreements with the city which are funded by federal or state grants and paid on a pass-through basis.
- (k) "Disadvantaged business enterprise" or "D.B.E.," in connection with a contract which is funded in whole or in part from state or federal governmental sources, means a business entity which is a disadvantaged business enterprise pursuant to the rules and regulations of such governmental source.
- (l) "Established business" means a business entity which, by virtue of its size and capacity for competing in the markets in which it operates, does not need to be a participant in the program in order to effectuate the purposes of the program, as determined by the chief procurement officer pursuant to regulations adopted by D.P.S. For calendar year 2000, a business entity shall be presumed to be an established business if the business entity and its affiliates have had annual average gross receipts in excess of \$27,000,000.00 over the previous three fiscal years. For calendar year 2001 and beyond, this sum shall be adjusted upwards or downwards by applying to it a rate equal to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) published by the United States Bureau of Labor Statistics for that calendar year. Such adjustment shall be made for a given year in January of the following year and shall remain in effect

(c) D.P.S. shall develop a list of M.B.E.s and W.B.E.s who are interested in participating in the target market program, including the type of contract in which each M.B.E. and W.B.E. is interested in participating. D.P.S. may make participation in the target market program dependent upon submission to stricter compliance audits than are generally applicable to participants in the program. No contract shall be eligible for inclusion in the target market program unless the list developed by D.P.S. indicates that there are at least three qualified M.B.E.s or W.B.E.s interested in participating in that type of contract. D.P.S. may develop guidelines to regulate the level of participation of individual M.B.E.s and W.B.E.s in the target market program in order to prevent the domination of the target market program by a small number of such entities. Where necessary or useful, D.P.S. may require M.B.E.s and W.B.E.s to participate in training programs offered by the department of planning and development or other city departments or agencies as a condition to participation in the target market program.

(d) Participation in the target market program shall be limited to M.B.E.s, W.B.E.s and joint ventures consisting exclusively of M.B.E.s, W.B.E.s or both. The prime contractor on a target market contract may subcontract up to 50 percent of the dollar value of the target market contract to subcontractors who are not M.B.E.s or W.B.E.s.

(e) D.P.S. may include in the target market program contracts which are funded by the state or federal government and may vary the standards of eligibility of the target market program (for example, by allowing the participation of D.B.E.s.) to the extent necessary to comply with the requirements of the government agency supplying the funding.

(f) If no satisfactory bid or response is received with respect to a contract which has been designated as part of the target market program, D.P.S. may delete such contract from the target market program, in which case the contract shall be subject to the requirements of Section 2-92-440 of this chapter. In addition, the chief procurement officer shall thereupon designate and set aside for the target market program additional contracts corresponding in approximate value to the contract which was deleted from the target market program, to the extent feasible.

(g) In order to facilitate the performance of target market contracts by M.B.E.'s and W.B.E.'s, the chief procurement officer may expedite payments under target market contracts, may reduce retainages under target market contracts where appropriate and may pay the contractor a portion of the value of a target market contract at the time of award as an advance to cover start-up and mobilization costs.

(Prior code § 26-105; Added Coun. J. 7-31-90, p. 19319; Amend Coun. J. 12-11-91, p. 10936; Amend Coun. J. 7-19-00, p. 38206, § 1; Amend Coun. J. 9-4-02, p. 92670, § 3)

2-92-470 Reserved.

Editor's note: Amend Coun. J. 5-26-04, p. 24585, § 2, repealed § 2-92-470, which pertained to construction project program. See also the Code Comparative Table.

2-92-480 Determination of compliance.

For purposes of determining compliance with any of the requirements for M.B.E. or W.B.E. participation in contracts under the several programs which constitute the program, contracts with M.B.E.'s or W.B.E.'s that involve performing the duties of a broker shall only be taken into account to the following extent: from the effective date of this ordinance through December 31, 1990, 20 percent; from January 1, 1991, through December 31, 1991, 10 percent; from January 1, 1992, through December 31, 1992, five percent; and thereafter, zero percent.

(Prior code § 26-107; Added Coun. J. 7-31-90, p. 19319)

2-92-490 Contract compliance officer.

A contract compliance officer shall be designated by the chief procurement officer. The contract compliance officer shall, in coordination with the board and the chief procurement officer, perform the following duties:

(a) Supervise the implementation of the program and report to the mayor and to the board on a quarterly basis the extent of achievement of the goal stated in Section 2-92-430 of this chapter, along with any recommendations for modification of the goal or of the measures contained herein;

(b) Establish uniform procedures to apply for certification as a M.B.E. or W.B.E. The certification of local businesses owned by one or more members of a minority group which are certified by the city as M.B.E.s or W.B.E.s at the effective date of this ordinance shall not be affected by the adoption of this ordinance until their current certification period expires or until they are decertified in accordance with subsection (g) of this section. Each application for certification shall be in writing, and executed under oath by an officer or owner of the applicant, and shall contain such information as may assist